IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

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JUDGMENT

LRs. Of Ulfat.
vs.
Deena Nath.

S.B.CIVIL SECOND APPEAL NO.132/2001 UNDER SECTION 100 CPC AGAINST THE JUDGMENT AND DECREE DATED 14.2.2001 PASSED BY SHRI B.M. GUPTA, ADDITIONAL DISTRICT JUDGE NO.2, BIKANER IN CIVIL APPEAL NO.99/1996.

DATE OF JUDGMENT ::: 18.4.2006

PRESENT

HON'BLE MR. PRAKASH TATIA, J.

Mr. Sajjan Singh, for the appellant.
Mr. G Vaishnav, for the respondent.

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BY THE COURT:

Heard learned counsel for the parties.

The appellant is aggrieved against the judgment and decree of the trial court dated 31.10.1995 and the appellant decree dated 14.2.2001. The trial court decreed the suit of the plaintiff/respondent against the appellant/

defendant for eviction and the appellate court dismissed the appeal of the appellant.

Brief facts of the case are that the plaintiff filed a suit for eviction of his tenant with the specific allegations that the plaintiff and his brother Mahendra Kumar are the owners of the house in dispute. Mahendra Kumar died about 20 years ago and he was unmarried. The plaintiff is the only legal heir of said Mahendra Kumar. The plaintiff let out the suit property about 9 years ago to the filing of the suit to defendant Ulfat, now deceased, on monthly rent of Rs.100/-. The rent was increased in the year 1983 to Rs.175/- and thereafter from the month of March, 1986 to Rs.250/-. The plaintiff filed the suit for eviction on the ground that the suit property is required for personal bonafide necessity of the plaintiff and on the ground of default.

The defendant submitted written statement and after denying the tenancy, denied the plaintiff's ownership for the house in dispute. The defendant pleaded that she came in the house in dispute in the year 1960 after her marriage and since then, she is residing in the house. She also stated that her husband constructed rooms after investing money. She also pleaded that her name and her husband's name are also given in the voters list, therefore, they are living in the house as owner. Despite the said pleading, she also pleaded that she and her family members became owners by adverse possession without specifying against whom she is claiming ownership by adverse possession.

In the trial court, the plaintiff produced the sale deed executed in favour of the plaintiff and his brother Mahendra Kumar which is dated 11.11.1954. The sale deed is registered one. The plaintiff gave his own statement and also produced witness PW2 Jitendra Swami. The defendant gave her statement and produced witness DW1 Gafoor.

The trial court held that the plaintiff by his evidence proved that the suit property was let out to the defendant and the defendant failed to produce any evidence to prove her possession in the house prior to 1980. She did not produced even any neighbour to prove her possession apart from the fact that she did not produce any documentary evidence about her entering possession. She did not even produce any evidence to show that the house was belonging to her husband or her husband's ancestors. The defendant also could not prove that she became owner of the house by adverse possession, therefore, the trial court decreed the suit of the plaintiff.

Before the first appellate court, the legal representatives of the original tenant submitted an application under Order 41 Rule 27 CPC which was allowed by the first appellate court and after considering the additional evidence, the first appellate court held that the plaintiff failed to prove her old possession or possession prior to 1990 in the house in dispute. The first appellate court considered the additional evidence namely, voters list produced by the legal representatives of the defendant and relying upon the documents produced by the appellants themselves held that by these documents, the

plaintiff could only prove that they were living in different houses from 1971 to 1980. The defendant failed to explain as to how different house numbers were given in the voters list and that fact support the plaintiff's contention that the suit property was let out to the defendant and these voters lists had no relation with the house in dispute.

Hence, this second appeal.

Learned counsel for the appellant submits that the plaintiff has not pleaded that the possession of the house was delivered to the defendant, therefore, the tenancy is not created as per Section 107 of the Rajasthan tenancy Act. It is also submitted that the plaintiff has not disclosed the exact date, month and year of the tenancy, therefore, the plaintiff is not entitled to the decree for eviction of the tenant. It is also submitted that the first appellate court did not consider the documentary evidence produced by the appellant after permission under Order 41 Rule 27 CPC. It is also submitted that it was the duty of the plaintiff to prove his case and the plaintiff cannot rely on the weaknesses of the defendant.

I have considered the submissions of learned counsel for the appellant and have perused the record and the reasons given by the two courts below.

The plaintiff in his plaint very specifically pleaded that the suit property was let out to the defendant about 9

years before filing of the suit. The pleading is very clear and even if there is no specific date or month mentioned in the plaint, still the plaintiff could have proved the relationship of tenancy by oral agreement and delivery of possession. The plaintiff pleaded in the plaint that the suit property was given to the defendant on rent of Rs.100/- per month 9 years before filing of the suit. In support of this plea, the plaintiff produced evidence. The defendant took all sorts of the pleas which she could have taken including vesting of title in herself and claiming title by adverse possession but without disclosing against whom she is claiming adverse possession. The defendant failed to prove her prior possession.

In view of the above, all preponderance of probabilities were considered by the two courts below and thereafter, two courts below decided the question of fact that the suit property was let out by the plaintiff to the defendant in favour of the plaintiff.

In view of the above, no substantial question of law arises in this appeal, therefore, this appeal deserves to be dismissed, hence, dismissed.

(PRAKASH TATIA), J.

S.Phophaliya